

3 FAM 7390

DOWNGRADINGS

(CT:PER-779; 07-29-2015)
(Office of Origin: HR/OE)

3 FAM 7391 GENERAL

(CT:PER-779; 07-29-2015)
(State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

- a. "Downgrading" means a reduction in the grade of an FSN employee because of the downward classification of the FSN's position or reassignment to a lower graded position.
- b. "Voluntary Downgrading" means reassignment where an FSN employee requests a transfer to a lower graded position which may or may not result in a pay rate lower than that previously obtained by the employee.
- c. "Involuntary Downgrading" may occur as a result of:
 - (1) Application of new or revised standards;
 - (2) Classification audit;
 - (3) Reorganization;
 - (4) Reduction-in-force; or
 - (5) Changes in a position's responsibilities, possibly resulting from reorganization or because of reassignment of duties when the incumbent has been unable to satisfactorily perform higher-level duties.

3 FAM 7392 VOLUNTARY DOWNGRADINGS

(CT:PER-779; 07-29-2015)
(State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

- a. At any time following successful completion of his and/or her probationary period, an FSN may request transfer to a lower graded position through the mission's normal vacancy announcement and selection procedure. Such requests may occur when an employee wishes to transfer into a different occupational field or when a lower graded position is available in a more convenient work location. Management should neither encourage nor discourage employees from applying for positions that would result in a

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downgrade. However, selecting officials and Human Resources officers should take care to ensure that the employee fully understands the implications of a voluntary downgrading on salary, benefits, and career.

- b. As the voluntarily downgraded employee may lose certain pay and benefits from a transfer to a lower graded position, the employee must request the transfer in writing to the HR officer through the U.S. supervisor and the section head, or, in the case of non-Department of State personnel, the head of the employing agency. It must contain a statement that the request is freely made and not the result of any coercion.
- c. A voluntarily downgraded employee is not entitled to any grade retention, frozen grade and/or step, or any other grade, salary, or title retention. Once an employee has requested a voluntary transfer to a lower graded position and action has been taken to effect same, there is no appeal or reclassification right associated with the voluntary downgrade.
- d. An employee who voluntarily transfers to a lower graded position will be downgraded to the grade of the new position and placed at the step which most nearly equals, but is not lower than, the pay rate previously obtained, even though this might result in a small pay increase. If the employee's pay rate exceeds the top rate for the pay range of the new position, the employee will be placed into the top step of the pay range for the grade of the new position even though this will result in a lower salary or benefit level.
- e. A voluntarily downgraded employee will not be eligible for promotion until he or she has served 52 weeks in the new grade unless otherwise authorized by the designated office of the headquarters of the employing agency.
- f. Time served in grade since the employee's last Within Grade Increase (WGI) before transfer to the lower grade position is creditable toward satisfying the waiting period established for WGI at the new, lower grade. However, the WGI waiting period of the new grade and step will determine the length of the waiting period and eligibility for step increases.

3 FAM 7393 INVOLUNTARY DOWNGRADINGS

3 FAM 7393.1 Policy

(CT:PER-779; 07-29-2015)

(State/Agriculture/BBG/Commerce/USAID)

(Applies to Foreign Service Nationals Only)

- a. No FSN who is involuntarily downgraded shall suffer a reduction of total pay and benefits.
- b. An FSN employee involuntarily downgraded is entitled to 52 biweekly pay periods of grade retention. Grade retention is intended to temporarily maintain

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an employee's previously attained pay entitlements and to provide a reasonable period during which the post and the employee can attempt to alleviate the personal effects of the downgrading action. For example, during the grade retention period, it may be possible to:

- (1) Reorganize work assignments sufficiently to justify upgrading the employee's position to its former level;
- (2) Reassign the employee to a vacant higher level position for which qualified; or
- (3) The employee reaches retirement age.

c. Downgrading for unsatisfactory job performance:

- (1) Employees may be involuntarily downgraded for unsatisfactory job performance, which occurs over a reasonably continuous period resulting from medical causes; lack of knowledge, skills, or abilities, or other nondisciplinary reasons. In such instances, employees may be downgraded by movement to lower level positions for which they are qualified or by removing higher-level responsibilities that they are unable to perform satisfactorily, and thereby downgrading the positions. In some cases, employees may not be suited for the type of work that they are currently assigned but are otherwise capable of performing satisfactorily in other available positions. In those cases, a post may wish to reassign the employees to different positions at the same or at lower grade, in order to better utilize their knowledge, skills, and abilities;
- (2) Downgrading an employee for unsatisfactory job performance should not be effected before standard avenues of performance improvement (for example, supervisory advice on deficiencies, job-related training, oral warning, written notice, denial of within-grade increase, notification of possibility of movement to a lower graded position, etc.) have been attempted and have failed;
- (3) Under no circumstances may a position be downgraded as a punitive action based only on the incumbent's unsatisfactory performance. An FSN position can be downgraded only as a result of removing the duties and responsibilities supporting the higher grade level or when the classification standards used to evaluate the position are changed; and
- (4) An employee may not be downgraded for violating generally acceptable standards of conduct as established or perceived at the mission. Likewise, an employee whose unsatisfactory job performance results from improper conduct and/or disciplinary problems, such as insubordination, abuse of leave, malfeasance, etc., is treated under 3 FAM 7720.

3 FAM 7393.2 Grade Retention

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- a. Employees involuntarily downgraded for any reason are entitled to a maximum of 52 pay periods of grade retention. During the grade retention period, employees will receive the full amount of any general wage increases and any within-grade increases otherwise due, unless the employee is already in a "saved rate" status. "Saved rate" cases are entitled to pay increases as set forth in 3 FAM 7500.
- b. An employee's grade retention becomes effective the beginning of the first pay period following the downgrade of the incumbered position, or movement to the lower graded position.
- c. Grade retention entitlements are not transferable in the case of an employee who voluntarily transfers to a position graded lower than the one incumbered during the grade retention period.
- d. At the beginning of the first pay period following the expiration of grade retention, the employee is changed to the appropriate grade of the incumbered position. In terms of salary treatments, however, no employee shall suffer a decrease in pay.
- e. If the employee's salary before the downgrading falls within the range of salaries at the appropriate lower level of the employee's position, the employee's salary is moved to the lowest step rate of the lower grade level which is not less than the employee's present total compensation.
- f. If the employee's salary before effecting the downgrading exceeds the maximum salary of the appropriate lower level of the employee's position, the employee's salary is saved (that is, remains unchanged) in accordance with 3 FAM 7530. Also see 3 FAM 7530 for guidance on annotating "saved pay" cases on a local compensation plan and on salary adjustments based on general salary increases in "saved pay" cases.

3 FAM 7393.3 Additional Provisions for Positions Downgraded by New and Revised Classification Standards

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(State/Agriculture/BBG/Commerce/USAID)

(Applies to Foreign Service Nationals Only)

- a. Unless otherwise specified on issuance of new classification standards, all new and revised FSN position classification standards must be implemented within one year of issuance.
- b. When a position is downgraded due to this issuance of new or revised FSN classification standards, the incumbent of the position will be offered a one-time

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choice of receiving grade retention and “saved rate” status under the provisions of 3 FAM 7393.2 or “frozen grade and/or step” under this section.

- c. The employee’s choice must be made in writing to the HR officer. If the employee fails to make a choice within 30 days of the classification action requiring downgrading, the “frozen grade and/or step” provisions under this section will apply.
- d. Under these “frozen grade and/or step” procedures, the employee will retain the grade and step already attained for the duration of his or her incumbency in the downgraded position. The employee will not be granted any additional step increases for any reason while in “frozen grade and/or step” status. The employee will be removed from “frozen grade status” if:
 - (1) The incumbered position is upgraded to its former level or higher;
 - (2) The employee is reassigned to a position classified to the same grade as, or promoted to a higher grade than, his or her frozen grade; or
 - (3) The employee is reassigned or transferred.

3 FAM 7394 HOST COUNTRY LAW AND PREVAILING PRACTICE

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In countries where host country law and prevailing practice for downgrading employees varies significantly from those set forth in this regulation, the Department, with the concurrence of the U.S. Government agencies represented at those posts, may authorize procedures which match those of the locality provided they are in the best interest of the U.S. Government. For further guidance, see 3 FAH-2 H-300.

3 FAM 7395 THROUGH 7399 UNASSIGNED